

**Wisconsin Works (W-2) and Related Programs Contract
for the period January 1, 2006 through December 31, 2009
between
the State of Wisconsin Department of Workforce Development
and
«Field1»**

THE CONTRACT is entered into by and between the State of Wisconsin Department of Workforce Development (Department) and «Field1» (W-2 Contract Agency) (collectively, "the Parties").

WHEREAS, the Department is authorized by section 49.143 of the Wisconsin Statutes, as amended, to contract with service providers to administer Wisconsin Works (W-2) under sections 49.143 to 49.161 of the Wisconsin Statutes (1999-2000), as amended; and

WHEREAS, the purpose of W-2 is to enable parents to fulfill their responsibility to nurture and support their families by providing community-based employment and supportive services and an opportunity to achieve, at the earliest possible time, economic independence and self-sufficiency through work; and

WHEREAS, the Parties wish to contract for the administration of W-2 and Related Programs by the W-2 Contract Agency for the geographic area(s) of «Field2»; and

WHEREAS, the W-2 Program: provides program participants assistance in making what might be their initial connection to employment; ensures that participants strengthen connections to employment and career ladders; provides employment stabilization services that ensure employment retention and rapid re-attachment; and provides assistance in obtaining SSI/SSDI for those participants with multiple and severe barriers to employment; and

WHEREAS, the W-2 Contract Agency, under contract with the Department, is required to perform all W-2 and Related Program services and to implement the entire program, except in Milwaukee where the delivery structure defines service responsibilities by agency type, in accordance with the Department's policies and procedures, for the above geographic area(s) and is wholly accountable and responsible for results;

NOW THEREFORE the Department and the W-2 Contract Agency agree as set forth in the Contract, the Contract Appendices, Attachments, and documents incorporated by reference into the Contract.

1. Contract Period

1.1 The Contract Period is January 1, 2006 through December 31, 2009.

2. Contract Review

2.1 The Department shall continually review the W-2 Contract Agency's compliance with the Contract, in accordance with Contract section 17.2. A Contract termination may result for a W-2 Contract Agency that is not in compliance with Contract requirements.

3. Contract Manager

3.1 Designated Contract Manager

The Department and the W-2 Contract Agency shall each appoint a Contract Manager.

3.2 Contract Manager Name

The Department's contract manager is the Division of Workforce Solutions (DWS) Regional Administrator. The W-2 Contract Agency's Contract Manager is the person identified on the W-2 Contract Agency's Agency Identification form.

3.3 Department's Contract Manager

The Department's Contract Manager manages the W-2 Contracts on a daily basis. The Department's Contract Manager will continually monitor the W-2 Contract Agency's performance under the Contract. The W-2 Contract Agency shall promptly undertake such improvements and corrections as may be reasonably necessary to correct any problems and/or deficiencies identified in the Department's Contract Manager's monitoring.

3.4 W-2 Contract Agency's Contract Manager

The W-2 Contract Agency's Contract Manager manages the W-2 Contract on a daily basis.

4. W-2 Administrator

The DWS Administrator is the W-2 Administrator and shall exercise all of the State's rights under the Contract. Any disputes between a W-2 Contract Agency and the Department under the Contract shall be resolved by the Disputes process. (See section 53 of the Contract.)

5. Notices Relating to Termination, Breach, Noncompliance, or Failure Penalty

Any notice or demand relating to termination, breach, noncompliance, or failure penalty shall be in writing and either delivered personally, by fax followed by certified mail, or by certified mail, return receipt requested, addressed to the Contract Manager. (See Contract section 3, Contract Manager.) Notices sent by fax must be followed up by certified mail or by regular mail within twenty-four (24) hours of the fax send time. The mail follow-up must be the same documents as the fax (no additional or changed documents may be included in the mailed follow-up).

6. Captions

The captions in the Contract and associated documents are intended for reference only and in no way define, limit or describe the scope or intent of any provisions contained therein.

7. Performance Standards and Incentive Earnings

7.1 Performance Standards

The W-2 Contract Agency must comply with the Performance Standards established by the Department for the delivery of services under this Contract.

The Performance Standards are:

Entered Employment Placement Rate;

Retention/Stabilization in the Workforce;

Wage At Employment;

Success of Job Skills Training;

SSI/SSDI Receipt;

Basic Education Activities;

Assessment; and

Quality of Case Management.

The detailed Performance Standard criteria are listed in Appendix B, Information Map for 2006-2009 Contract, Performance Standards for the 2006-2009 W-2 and Related Programs Contract, which is incorporated by reference into this Contract.

7.2 Incentive Earnings

The incentive earnings are reserved for large W-2 Contract Agencies whose Community Service Jobs (CSJ) caseload reaches fifty (50) or more for the most recent three (3) consecutive months for which data is available prior to the start of the Contract Period and each calendar year thereafter during the Contract Period.

In an Incentive Based Contract, twenty percent (20%) of the services and service-related administration funding must be earned through achieving specific program placement outcomes.

The program placement outcomes that will be measured for Incentive Earnings are as follows:

Job Entry Rate Equal to or Less than Ninety (90) days;

Job Entry Rate More than Ninety (90) days;

Employment Retention and Stabilization; and

Approval and Receipt of SSI or SSDI.

The detailed Incentive Earnings outcomes are listed in Appendix C, Incentive Earnings for the 2006-2009 W-2 and Related Programs Contract, which is incorporated by reference into this Contract.

8. Compliance with Policies for W-2 and Related Programs

8.1 Compliance with All Contract Terms and Conditions

The W-2 Contract Agency is responsible for delivering W-2 and Related Program activities in accordance with the Department's policies and procedures. The W-2 Contract Agency and any subcontractor must comply with the Department's policies and procedures. The Affidavit of Fair Competition (Part 2, Section One, #1.15 of the W-2 Plan) includes a statement that the W-2 Contract Agency must comply with all terms, conditions, and Response Items required by the State in the Contract, documents incorporated by reference, and the W-2 Plan.

8.2 Program Management

The W-2 Contract Agency is responsible for the delivery of the W-2 program services to individuals, including but not limited to, assuring the following: culturally competent (See Contract sections 28 and 29.), quality strengths based services to participants through appropriate and ongoing assessment, including career related assessments; referral to needed services and the direct provision of services as applicable through case management; individualized career counseling and career exploration, education, training, including short term customized skills training; employment services, including job development and placement services; providing supplemental security income advocacy; complying with W-2 policies that support the Family Violence Option; implementing fact-finding decisions timely; applying appropriate sanctions; and issuing emergency payments. The W-2 agency must strive to assist individuals to obtain full time, quality wage employment with career advancement potential in demand occupations. The W-2 Contract Agency must maintain current written internal program policies and procedures of implementation of state W-2 policies and make them available to the Department for review when requested.

8.3 Financial and Administrative Management and Operations

The W-2 Contract Agency is responsible for the financial management of the program, including compliance with all required policies and procedures related to the contracted funds or subcontracted funds, including but not limited to, reporting and recordkeeping, personnel and staffing. The W-2 Contract Agency must maintain current written internal financial policies and procedures and make them available to the Department for review when requested.

The Department may at any time require specific actions of the W-2 Contract Agency to assure sound financial management of the contract, including but not limited to, special monitoring, financial oversight diagnostic reviews, a state-imposed audit, an independent fiscal agent, Board Member consultations, or other actions as may be necessary to determine compliance and proper expenditure of the funds.

9. Policy Change

9.1 Department's Policies and Procedures

The W-2 Request for Proposals, the Right of First Selection Re-contracting Instructions, the W-2 and Related Programs Contracts (hereinafter referred to as the Contract), and the Department's policies and procedures define the W-2 Program requirements.

The Department's policies and procedures for W-2 and Related Programs are found in the following documents:

Wisconsin Statutes (<http://folio.legis.state.wi.us/>)

Wisconsin Administrative Code (<http://folio.legis.state.wi.us/>)

Wisconsin Works (W-2) Food Stamp Employment and Training Manual (<http://dwd.wisconsin.gov/dws/w2/fset.htm>)

W-2 Program Manual (http://dwd.wisconsin.gov/dws/manuals/w-2_manual/first_page.htm)

W-2 Administrative (Policy) Memo's (<http://dwd.wisconsin.gov/dws/adminmemos/default.htm>)

W-2 Operations (Policy) Memo's (<http://www.dhfs.wisconsin.gov/em/ops-memos/>)

The Department's financial policies for contracts and grants can be found at http://dwd.wisconsin.gov/dws/grants_contracts/default.htm.

The Department's civil rights requirements for contracts and grants can be found at http://dwd.wisconsin.gov/dws/civil_rights/default.htm.

9.2 New Policy Mandate

The Department will issue new policy mandates as required to do so by State or federal law, rules or regulations or a court order or a settlement agreement.

9.3 Adopting New Policies

The Department may issue a new policy mandate which is not required by State or federal law, rule or regulation, a court order, or a settlement agreement, to the extent that the new policies are necessary to implement service improvements. The Department shall follow the procedure in Contract section 9.4 to issue a new policy mandate.

9.4 Proposed New Policies and Procedures

If the Department proposes a new policy that is not required by State or federal law, rules or regulations or court order or settlement agreement, the Department shall notify the W-2 Contract Agency. The W-2 Contract Agency will have thirty (30) calendar days to comment on the fiscal impact to the W-2 Contract Agency of such a change. The Department shall consider such comments prior to the implementation of new policies and procedures. Under emergency conditions, the Department may implement a new policy immediately or within a period of fewer than thirty (30) days, but shall otherwise comply with this section.

9.5 Required Training for W-2 Contract Agency Staff

9.5.1 Department Directed

The W-2 Contract Agency must attend Department directed training. Topics of the Department directed training include, but are not limited to, program requirements, financial management, civil rights requirements and the Department's automated systems requirements.

9.5.2 W-2 Contract Agency Role

The W-2 Contract Agency must ensure that its staff completes the required initial training and ongoing training, and other training as required by the Department, for all W-2 staff, including but not limited to the Financial Employment Planner (FEP), Resource Specialist (RS), supervisors and lead workers, financial and accounting personnel, and the civil rights officer.

All RS, FEPs, lead workers, supervisors, and civil rights compliance officers will be required to complete training that addresses issues regarding language access (See

Contract section 28.) and cultural competency, racial and ethnic minority, and disabled participants. This includes but is not limited to the requirements of Title VI of the Civil Rights Act, Sec. 504 of the Rehabilitation Act, and the Americans with Disabilities Act, with particular attention to the effect of those laws on the operation of the W-2 program.

9.5.3 Department Review

The Department will review the W-2 contract Agency's compliance with the training requirements set forth in federal or state law and regulations, policy memoranda, or this Contract, for the RS, FEP, lead workers, supervisors and other W-2 staff.

10. Funding Change

The W-2 Contract Agency agrees that the obligations of the Department under the Contract are limited by, and contingent upon, legislative authorization and budget appropriations. If, during the Contract Period, the appropriations that fund performance under the Contract are not made or are repealed or reduced by actions of Congress or the State Legislature, then the Department shall notify the W-2 Contract Agency of the funding change. The Department shall provide guidance to the W-2 Contract Agency concerning the modification of its Plan to reflect the available funding. If the W-2 Contract Agency makes a determination that additional changes in required services are necessary because of the lack of funds, the W-2 Contract Agency may, within thirty (30) calendar days, present a proposed plan to the Department for modifications in required services. The Department will respond within thirty (30) calendar days to such a proposed plan in making its final decision on the services to be performed.

11. W-2 Plan to Administer W-2 and Related Programs

11.1 W-2 Plan Documents

The W-2 Plan to Administer W-2 and Related Programs shall consist of the W-2 Contract Agency's Management and Financial Response Items, Program Plan Response Items and all required forms submitted to the Department in 2005 as approved by the Department and as modified in accordance with section 11.5 of the Contract. The W-2 Plan to administer W-2 and Related Programs must be consistent with the W-2 and Related Programs RFP and/or the Department's Re-contracting instructions for the Right of First Selection (RFS) agencies.

11.2 Property of the Department

The W-2 Plan and any Plan Modifications submitted to the Department become the property of the Department upon receipt. All rights, title and interest in all W-2 Plan materials and ideas prepared by the W-2 Contract Agency shall become the exclusive property of the Department and may be used by the Department at its option.

11.3 W-2 Plan Administration

The W-2 Contract Agency must perform its contract duties in accordance with its approved Plan.

11.4 Scope of Work

The scope of work includes but is not limited to, all of the elements of the approved W-2 Plan, in accordance with the Department's policies and procedures.

11.5 W-2 Plan Modification

11.5.1 W-2 Contract Agency Initiated

11.5.1.1 Proposed Substantive Plan Modification

If the W-2 Contract Agency determines that a substantive change is needed to the W-2 Plan, the W-2 Contract Agency shall submit the proposed change in writing to the Department's Contract Manager for written approval. A substantive change includes, but is not limited to, a change in services or a service provider; service hours or the location where services are provided; management oversight or contract administration; or access to and delivery of services. The Department's Contract Manager shall within ten (10) business days of notification by the W-2 Contract Agency submit a written response which will state the

Department's approval or disapproval of the proposed W-2 Plan Modification.

11.5.1.2 Updates to the W-2 Plan

In the absence of any substantive change that would require a W-2 Plan Modification, the W-2 Contract Agency must submit any updates to the Plan (or a statement that there are no updates to the W-2 Plan) to the Department's Contract Manager at least twice annually.

11.5.2 Department Initiated

11.5.2.1 Modifications – Substantive

If the Department determines that a substantive change is needed to the W-2 Plan, the Department shall notify the W-2 Contract Agency. The W-2 Contract Agency shall, within ten (10) business days of notification by the Department, submit a written proposed W-2 Plan Modification to the Department's Contract Manager. The Department's Contract Manager shall notify the W-2 Contract Agency of the Department's approval or disapproval of the proposed W-2 Plan Modification within ten (10) business days.

11.5.2.2 Modifications Relating to the Contracting Process

If the Department determines that a change is needed to a Proposal proposed as a part of the RFP contracting process or a Plan proposed as part of the RFS contracting process, the Department shall notify the W-2 Contract Agency and the W-2 Contract Agency shall submit the modification to the Department's Contract Manager within ten (10) business days.

12. Contract Interpretation

The Department is solely responsible for rendering decisions in matters of interpretation on all terms and conditions of the Contract. Any ambiguity or inconsistency among the Contract documents shall be resolved by applying the following order of precedence:

- (a) The Contract, including any Appendices, Attachments and Amendments;
- (b) The RFP, including all forms, Appendices, Addenda and incorporated documents, and the Response Items from the Department's Administrator's Memo regarding Wisconsin Works (W-2) and Related Programs Re-contracting Instructions for the Contract Period January 1, 2006 through December 31, 2009; and
- (c) The W-2 Contract Agency's Plan, including any approved Modifications.

13. W-2 Contract Agency Structure

13.1 Duly Incorporated and Registered

With the exception of government agencies and tribal governing bodies, a W-2 Contract Agency must be duly incorporated and registered under Wisconsin Statutes.

13.2 Single Organization Unit

Each W-2 Contract Agency must have a structure which permits the Department to hold it accountable as an entity, as opposed to a structure in which the W-2 Contract Agency is made up of co-equal partners, each of whom can be held accountable only for their specific contracted responsibilities. The W-2 Contract Agency must consist of a single organizational unit or when a consortium exists there must be a single point of contact and accountability.

13.3 W-2 Contract Agency Director

Each W-2 Contract Agency must be headed by a W-2 director who administers through an appropriate chain of command. The director must retain powers to provide, purchase or subcontract for services necessary to meet its contractual obligations as a W-2 Contract Agency, without such decisions requiring prior authorization from partner agencies. Nothing in this section is intended to remove authority from a County Board, Board of Directors or a Tribal Governing body. The W-2 director must have management control over the W-2 Contract Agency workforce, which may be exercised either through direct hiring or through subcontracts. The W-2 Contract Agency director must be competent to manage a diverse workforce.

13.4 Private Agency Board Oversight and Independence

Private W-2 Contract Agencies must demonstrate adequate Board oversight and independence to operate the W-2 Program. The private W-2 Contract Agency must: have written by-laws that are updated as needed; have a regular schedule of Board meetings; maintain minutes of all Board meetings and distribute those minutes to Board members and key agency staff and have a written policy on conflicts of interest and evidence that Board members and senior management staff have received a copy and signed it. All Board-related documentation must be available for Department review.

Further, Board members must be trained in management responsibilities including financial statements and operations, accounting and auditing compliance, code of conduct, conflict of interest and monitoring of internal controls. Financial Information, including but not limited to a statement of financial position, statement of activities, comparison of actual cost versus budget and a cash flow analysis, must be presented to the board on a regular basis for review.

14. Subcontracts

14.1 Requirements

The W-2 Contract Agency may subcontract for some or all of the services covered in the Contract. The W-2 Contract Agency remains responsible for all of the W-2 and Related Program services. Accordingly, the W-2 Contract Agency must require the subcontract entity to comply with all applicable provisions of the W-2 Contract.

In order for a W-2 Contract Agency to issue payment to another agency for any service under the Contract, a subcontract must be reviewed and approved by the Department.

Upon signing a subcontract, in accordance with the Department's policies and procedures, the W-2 Contract Agency must submit a copy to the Department's Contract Manager for review within fifteen (15) business days.

The W-2 Contract Agency must provide a list of all current subcontracts to the Department's Contract Manager within ten (10) business days after each calendar quarter of the Contract Period. The list must be in accordance with the Department's policies and procedures.

14.2 Prior Costs

Costs incurred before the execution of a subcontract are not allowable costs for reimbursement unless the Department has reviewed and approved in writing the amount and type of costs and the reason that costs were incurred before the execution of the subcontract.

14.3 Compliance

The W-2 Contract Agency must comply with all subcontract requirements under the applicable state and federal laws and the Contract, including any applicable requirements in the Department's policies and procedures. This includes, but is not limited to, prohibitions of employees from business dealings with subcontractor organizations.

14.4 Subcontracting by Subcontractors

For purposes of the Contract, subcontracting by subcontractors is permitted. All subcontractors, whether first-, second-, third-tier, or more must abide by all the terms of the Contract, including Funding Change (See section 10 of the Contract.), and the Department's policies and procedures.

14.5 Responsibility

The W-2 Contract Agency is responsible for contract performance when subcontractors are used. The W-2 Contract Agency must obtain certifications from subcontractors stating that neither the subcontractors nor potential sub-recipients, contractors, or any of their principals are debarred, suspended or proposed for debarment. (See Certification Regarding Debarment form, Part 2, Section 1.18 of the W-2 Plan.) The W-2 Contract Agency must obtain lobbying compliance certifications from subcontractors. (See Lobbying, Part 2, Section 1.19 of the W-2 Plan.)

14.6 Non-discrimination Against an Organization

The W-2 Contract Agency shall not discriminate against an organization that is or applies to be a subcontractor on the basis that the organization has a religious character. The W-2 Contract Agency shall not require the faith-based organization to alter its definition, development, practice or expression of its religious beliefs, nor shall it require the organization to alter its internal governance or remove religious art or any other expression of its religious belief in order to enter into a subcontract with or be awarded a grant from the W-2 Contract Agency.

14.7 Non-discrimination Against an Applicant or Participant

The W-2 Contract Agency shall not discriminate against any W-2 or Related Programs applicant or participant on the basis of religious or lack of religious belief. Therefore, if the W-2 Contract Agency subcontracts with a faith-based organization to provide case management services or assistance to W-2 and Related Programs participants, it must make available within a reasonable time an alternative provider of the same services, worth the same value, to any participant who objects to the religious character of the organization or institution from which the participant would receive or is receiving case management services or assistance.

14.8 Fiscal and Accounting Standards

The W-2 Contract Agency shall require any faith-based organization that it subcontracts with or awards a grant to, to meet the same fiscal and accounting standards, and generally accepted accounting principles as any other private provider.

14.9 Subcontract Audits

Subcontractors that expend \$500,000 or more in a year in federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133. Unless waived by the Department, subcontractors that expend less than \$500,000 in a year in federal awards, but more than \$25,000 in Department funds shall have a limited scope audit as provided for in Subpart B, Section 230 (b) (2) or OMB Circular A-133. These limited scope audits shall consist of agreed-upon procedures engagements conducted in accordance with either the American Institute of Certified Public Accountants' (AICPA) generally accepted auditing standards or attestation standards, that are paid for and arranged by the W-2 Contract Agency and address only the following types of compliance requirements relative to the W-2 program: activities allowed or unallowed; allowable costs/cost principles; eligibility and reporting.

The W-2 Contract Agency shall obtain, review and resolve subcontractor audits in accordance with OMB Circular A-133. Any costs disallowed under the subcontractor audits will be recovered by the W-2 Contract Agency.

14.10 Subcontractor Monitoring

The W-2 Contract Agency is responsible for monitoring performance, compliance and costs claimed of all subcontractors. These monitoring efforts will be documented and shall include

on-site visits, at least annually. Any cost disallowed as a result of subcontractor monitoring will be recovered by the W-2 Contract Agency.

15 Records

15.1 Maintenance

The W-2 Contract Agency shall comply with the records, reporting and monitoring requirements of the Department's policies and procedures. The W-2 Contract Agency shall maintain such records, reports, evaluations, financial statements and necessary evidence of accounting procedures and practices to document the funding received and disbursements made under the Contract. The W-2 Contract Agency shall provide information in a form and manner prescribed by the Department, including but not limited to, using the CARES system and/or other systems designated by the Department.

Financial records must be maintained in accordance with Generally Accepted Accounting Principles (GAAP). This includes, but is not limited to, developing consolidated financial statements with standardized chart of accounts, standard elimination worksheets, a standard reporting package, monthly reconciliation of accounts and posting to the general ledger with appropriate documentation and internal control procedures. W-2 Contract Agencies shall maintain short-term cash flow projections of thirty (30), sixty (60) and ninety (90) day increments for salary, contractor, consultant, lease and other costs and shall align expenditures with revenue on thirty (30), sixty (60) and ninety (90) day increments.

15.2 Availability

Upon request, the W-2 Contract Agency shall make records available to the Department for inspection including records and information, which may not be maintained in CARES. The W-2 Contract Agency further agrees to transfer to the Department any original or copy of records that the Department requests during or after the Contract Period as soon as practical and no later than within ten (10) business days. The W-2 Contract Agency shall use the schedules for record retention in accordance with the Department's policies and procedures and State and federal law.

15.3 Retention

In the case of documents that are not covered by the schedules for record retention in accordance with the Department's policies and procedures and State and federal law, the W-2 Contract Agency will retain all documents applicable to the Contract for a period of not less than three (3) years after the final payment under the Contract is made.

15.4 Confidentiality

Except as provided by Wisconsin Statutes, the W-2 Contract Agency shall keep participant records confidential and shall properly dispose of them in accordance with State and federal rules and policies.

15.5 Data Sharing Agreement

A signed data sharing agreement between the Department and the W-2 Contract Agency is required before access to the Department's automated systems will be granted. The confidentiality and disclosure requirements in the data sharing agreement survive the termination of the Contract. Upon termination of the Contract all personal identifiable participant information stored on electronic media must be erased in such a way that it is not recoverable. All paper documentation containing personal identifiable participant information that is not turned over to the succeeding W-2 Contract Agency or the Department must be shredded.

16 On-Site Visits

The Department may conduct on-site visits at any time and without prior notice to the W-2 Contract Agency, using either its own employees or agents, to conduct inspections or audits or for any other purposes as the Department deems necessary to determine the W-2 Contract Agency's compliance with the Contract. The cost to the Department of an on-site visit will be paid by the Department unless the Department determines that an on-site visit is required by the failure of the W-2 Contract Agency to satisfactorily perform its responsibilities under the Contract.

17 Records of Contract Compliance Issues, Monitoring, and Corrective Action

17.1 Records of Contract Compliance Issues

Both the Department and the W-2 Contract Agency must maintain records of potentially serious contract compliance issues. The records shall identify the date(s), the issue(s) and how the issue(s) was resolved including required follow up actions and timeframes.

17.2 Monitoring

17.2.1 Contract Compliance

The Department will monitor the W-2 Contract Agency for its compliance, inclusive of any aspect of the W-2 program, including but not limited to, the contract, financial requirements, administrative requirements, policy and program requirements, civil rights requirements, training requirements, requirements to prevent racial, ethnic or other disparities in program operation, as may be necessary to determine the quality and effectiveness of the W-2 Contract Agency's performance as a service provider.

17.2.2 Annual Reviews

The Department will conduct monitoring reviews of the W-2 Contract Agency at least annually. The purpose of the review shall be to determine if the W-2 Contract Agency is meeting the Performance Standards, projected outcomes and other program expectations, per Contract section 17.2.1, and whether the Department shall take an action under Contract sections 16 (On-site Visits), 17 (Records of Contract Compliance Issues, Monitoring, and Corrective Action), 18 (Failure Penalty), or 20 (Termination) or any other provision of the Contract. Contracts for W-2 Contract Agencies that do not meet the annual performance review benchmarks may be terminated. (See Contract sections 20.7, Replacement of W-2 Contract Agencies after a Contract Termination.)

17.2.3 Financial Monitoring

The W-2 Contract Agency must provide financial information as required by the Department. Such information includes, but is not limited to, staff salary and incentives, severance pay, FTE counts, rent amounts, audit adjusting entries, audit bid and actual audit costs, summary of experience and qualifications of external audit staff conducting the Single Audit, minimum experience and qualifications of staff responsible for approval of transactions, conflict of interest relationships, and related party transactions.

17.2.4 Use of Tester for Monitoring

DWD will utilize testers, on a random and anonymous basis, as a part of its program to monitor the compliance of the W-2 Contract Agency with its duties under the Contract, including but not limited to initial requests for assistance, assessments, program and civil rights compliance.

17.2.5 Corrective Action Plan

Based on the results of each monitoring review, the Department will notify the W-2 Contract Agency of items which require a Corrective Action Plan and the time allowed, which shall be no less than ten (10) business days, and no more than thirty (30) calendar days, or longer if pre approved by the Department, to implement the Corrective Action Plan.

17.2.6 Failure

If the W-2 Contract Agency fails to fully implement substantial required Corrective Action(s), the Department may take action under Contract section 20.2 to terminate the Contract or revoke the W-2 Contract Agency's Right of First Selection status. (See Contract section 20.)

17.3 Corrective Action Outside of Monitoring Reviews

17.3.1 Opportunity for Corrective Action Plan

Except under the Penalty Amounts (section 18.3) and Substantial Noncompliance (section 20.3) sections of the Contract, the W-2 Contract Agency at its discretion may submit a Corrective Action Plan to address noncompliance with the provisions of the Contract.

17.3.2 Requirement

Within six (6) business days of receipt by the W-2 Contract Agency of notice of failure to perform any provision of the Contract, the W-2 Contract Agency shall submit to the Department's Contract Manager for approval a Corrective Action Plan to remedy such failure.

17.3.3 Failure

A failure by the W-2 Contract Agency to submit an approvable Corrective Action Plan or a failure by the W-2 Contract Agency to fully implement the approved Corrective Action Plan within ten (10) business days of approval of the Corrective Action Plan by the Department shall constitute Uncorrected Nonperformance under the Contract and may be cause for termination of the Contract. If the W-2 Contract Agency fails to fully implement substantial required Corrective Action(s), the Department may revoke the W-2 Contract Agency's Right of First Selection status. (See Contract section 20.)

17.4 Payment Adjustments for Failure to Take Corrective Action

After giving the W-2 Contract Agency notice and an opportunity to take corrective action, the Department may reduce, withhold or recover payments to the W-2 Contract Agency if the W-2 Contract Agency fails to satisfactorily perform its responsibilities under the Contract.

18. Failure Penalty

18.1 Investigation

The Department shall investigate an alleged instance of failure to implement programs or operations requirements for the W-2 and Related Programs based on information received from a complaint from any source, including, but not limited to, a W-2 applicant or participant a management report analysis, a case review, on-site monitoring, or desk monitoring.

18.2 Procedure

The Department's Contract Manager shall describe in writing the alleged instance of failure to implement programs or operations requirements for the W-2 and Related Programs and shall provide a copy to the W-2 Contract Agency. The Department shall investigate the alleged instance of failure and shall issue a written finding of fault or no fault. The W-2 Contract Agency must cooperate with the Department's investigation. At the Department's discretion, a finding of fault may include a warning and a Corrective Action Plan requirement and timeline to resolve the finding. The Department at its discretion may waive part or the entire damage amount set forth in the Penalty Amounts section of the Contract. The W-2 Contract Agency may use the Disputes process under the Contract to obtain review of a written finding under this section, but any such dispute must be received by the Department Chief Legal Counsel within ten (10) business days of the W-2 Contract Agency's receipt of the written finding.

18.3 Penalty Amounts

If the W-2 Contract Agency fails to implement the W-2 Program, or operations requirements of the W-2 Program, the W-2 Contract Agency shall be subject to a financial penalty. If the W-2 Contract Agency denies or refuses services, or if the W-2 Contract Agency fails to do any one of the following, but not limited to these examples: provide necessary services to W-2 applicants or W-2 participants; provide necessary accommodations for disabled persons to access all W-2 services; provide language access and cultural competent services; conduct initial and ongoing assessments, assign appropriate placements and hours in the

activity, maintain complete and accurate electronic and paper case files, implement fact finding decisions, implement the extension policy appropriately, comply with good cause policies, monitor the W-2 Contract Agency's operation of the W-2 program; provide timely follow up and correction of underpayments on inappropriate sanctions, case closures, and other inappropriate adverse actions; correct a pattern of non response to telephone contacts; respond timely to written contact from a W-2 applicant or W-2 participant; provide publicly advertised W-2 services in terms of location, hours, or staff availability; implement the W-2 and Related Programs or operations requirements; or pay participants correct benefits, and the W-2 Contract Agency knew or should have known that the failure was not in compliance with a Contract requirement, the Parties hereby agree that damages will be difficult to calculate. Accordingly, upon the Department's finding of such a failure, liquidated damages may be assessed in any amount up to Five Thousand Dollars (\$5,000) per violation or per participant whom the agency has failed to properly serve and/or up to Five Thousand Dollars (\$5,000) per day that the agency has failed to take the action resulting in such failure. (See Contract sections 17.2.6 Failure, 17.3.3 Failure, and section 20.7 Replacement W-2 Contract Agencies after a Termination.) These damages shall be collected under section 26.10 of the Contract, Payment Adjustments.

19. Inability to Perform

The W-2 Contract Agency shall immediately notify the Department whenever the W-2 Contract Agency is unable to provide the required services specified under the Contract. Upon such notification, the Department shall determine whether such inability will require an amendment to or termination of the Contract.

20. Termination of Contract

20.1 Without Cause

Either Party may terminate the Contract without cause upon written notice effective at the end of the month in which the one hundred and twentieth (120th) calendar day occurs.

20.2 Uncorrected Nonperformance

Termination for Uncorrected Nonperformance under section 17.3.3 of the Contract shall be effective within ten (10) business days after the Department has mailed notice of termination.

20.3 Substantial Noncompliance

The Department may terminate the Contract immediately if the Department determines that the W-2 Contract Agency is in substantial noncompliance with the terms and conditions of the Contract which creates an emergency that requires the Department to implement an emergency contract with another entity. Substantial noncompliance exists, for example, when the W-2 Contract Agency is not providing intake services at the W-2 Contract Agency's locations in the community, and the W-2 Contract Agency is unable to state when it will be able to provide services again. Termination of the Contract for substantial noncompliance shall be effective two (2) business days after the Department has mailed notice of termination.

20.4 Cancellation

The State reserves the right to cancel any Contract in whole or in part without penalty due to nonappropriation of funds by Congress or the State Legislature.

20.5 Reimbursement

20.5.1 Requirement

If the Department terminates the Contract, the Department shall reimburse the W-2 Contract Agency for Allowable Costs of services performed under the Contract. The Department may also reimburse the W-2 Contract Agency for reasonable and approved close-out costs. If the W-2 Contract Agency terminates the Contract without cause, the Department will exercise due diligence in selecting and contracting with a replacement W-2 Contract Agency, which may result in a reduction by the Department of the notice period under Without Cause, section 20.1 of the Contract.

20.5.2 Discretion of the Department

In addition to the costs allocated in the Department's document titled Allocations for the 2006-2007 period of the W-2 and Related Programs Contract, Appendix A to the Contract, and at its sole discretion, the Department may reimburse the W-2 Contract Agency for costs incurred during the notice period.

20.5.3 Determination of Closeout Payments

The Department may adjust the timing and amount of payments to the W-2 Contract Agency pending final closeout payment determinations by the Department.

20.6 Performance Surviving Termination

The obligations of the Parties under the following sections of the Contract shall survive the termination of the Contract:

Contract section 15 Records;

Contract section 18 Failure Penalty;

Contract section 21 Coordination and Cooperation;

Contract section 26 Payment;

Contract section 27 Audit and Audit Liabilities;

Contract section 36 Indemnification;

Contract section 38 W-2 Contract Agency Tax Delinquency;

Contract section 39 Copyright and Publication Rights;

Contract section 47 Severability;

Contract section 49 Time Is of the Essence;

Contract section 50 Waiver; and

Contract section 53 Disputes.

20.7 Replacement W-2 Contract Agencies after a Contract Termination

20.7.1 Selection Process

If, for any reason, a W-2 Contract is terminated during the Contract Period, the Department may select a replacement W-2 Contract Agency for the balance of this Contract Period by one of the following: initiating the full procurement process; selecting from the proposers that met the Department's 2006-2009 W-2 Request for Proposals requirements; or selecting from the existing W-2 Contract Agencies that are administering W-2 in another geographic area and are meeting the Department's requirements for Contract Compliance.

20.7.2 Department Administration

If no acceptable W-2 Contract Agency is selected for a geographic area, through the above process (Contract section 20.7.1), the Department will administer the W-2 Program in that geographic area.

21. Coordination and Cooperation

21.1 Partner or Successor Agency

The W-2 Contract Agency must cooperate with all partner agencies and with any successor agency.

21.2 Workforce Investment Act Coordination

The W-2 Contract Agency is responsible for coordination with the local Workforce Development Board (WDB) as the local board performs its planning and oversight functions under the Workforce Investment Act (WIA) of 1998, Public Law 105-220.

21.3 Cooperation with Other Programs

The W-2 Contract Agency shall cooperate with the income maintenance (IM) agency for its geographic area(s) in administering the joint application process for W-2, Medicaid (MA), Food Share (FS) and Child Care. This shall include providing work space for child care administration workers, any county child care eligibility workers required due to a subcontract with a county, and FS/MA workers.

The W-2 Contract Agency shall cooperate with the tribal human service agencies, county human service agencies, housing agencies, child support offices, and corrections units, to ensure additional support for W-2 participants.

21.4 Job Center Integration

The W-2 Contract Agency must fully integrate its delivery of W-2 and the Related Programs in the Job Center System. This integration requires co-location of W-2 employment and training services/staff where a Job Center exists in the W-2 geographic area.

21.5 Child Welfare Coordination

The W-2 Contract Agency must comply with its approved coordination plan that was developed with the local Child Welfare agency and approved by the Department. This plan must include the following; a description of how information will be shared; a description of the joint assessment and planning process; a description of how services will be coordinated; and a statement of the roles and responsibilities of each agency.

21.6 Coordination with Other Employment and Training

The W-2 Contract Agency must coordinate with the Technical Colleges, with the providers of the Workforce Investment Act Adult, Dislocated Worker and Youth programs, with the providers of Refugee Employment and Training programs, and with the Division of Vocational Rehabilitation to ensure the integration of services.

22. Funding Available

22.1 Requirements

The W-2 Contract Agency is responsible for serving the eligible population in the applicable geographic area with a specified funding amount identified. (See Allocations for the 2006-2007 period of the W-2 and Related Programs Contract, Appendix A to the Contract.)

22.2 Tribal Temporary Assistance for Needy Families Program

In the event that an American Indian Tribe exercises its option to create a tribal Temporary Assistance for Needy Families (TANF) program, or in the event that a tribe discontinues its administration of a tribal TANF program, the Department reserves the right to adjust one or more W-2 Contract Agencies' Base Allocation if a W-2 Contract Agency's geographic area overlaps with the American Indian tribal TANF service area.

23. Cost Allocation Requirements

County W-2 Contract Agencies are required to comply with the Department's methods and procedures for allocating costs. County Indirect Cost Allocation Plans must be provided to the Department upon request.

County W-2 Contract Agencies and the Department must comply with Federal Cost Allocation mandates, including county participation in the Department's Random Moment Sampling survey process. County W-2 Contract Agencies must comply with Department policies and procedures regarding submission of the Shared Costs and Employee Counts.

Private W-2 Contract Agencies are required to comply with the Department's policies on cost allocation, including one hundred percent (100%) time reporting. The private W-2 Contract Agency is required to prepare and maintain an up-to-date Cost Allocation Plan, which complies with the Department's policies and procedures, and is available to the Department's Contract Manager, upon request.

24. W-2 Contract Agency Procurement Activities

24.1 Requirements

The W-2 Contract Agency agrees to conduct its procurement transactions for purchases under the Contract by adhering to all applicable federal, State, and local requirements.

24.2 Equipment

The W-2 Contract Agency agrees to comply with the Department's policies and procedures regarding equipment procured under the Contract including inventories, minimum operating standards, installation, ownership, depreciation, moves, repair and maintenance.

25. Minority Business Enterprises

25.1 State Goal

The State of Wisconsin has a goal of placing five percent (5%) of its total purchasing dollars with certified minority business enterprises (MBE). (See sections 15.107(2), 16.74(4), 16.755 and 560.03(2) of the Wisconsin Statutes.) The W-2 Contract Agency is encouraged to purchase services and supplies from MBEs certified by the Wisconsin Department of Commerce, Bureau of Minority Business Development.

25.2 Identification of MBE Subcontractors

The W-2 Contract Agency shall meet with the Department to identify MBE subcontractors for the provision of services for the Contract. The W-2 Contract Agency shall identify the services purchased from Certified MBE subcontractors in the quarterly report of subcontractors filed under section 14.1 of the Contract.

25.3 Certified Minority Businesses

A list of certified MBEs, and the services and commodities they provide is available from the Department of Administration, Office of Minority Business Programs, 608-267-7806. The list is published on the Internet at: <http://www.doa.state.wi.us/deo/mbe/report2.asp>

26. Payment

26.1 Contract Total

The Contract is a reimbursement contract, meaning that a W-2 Contract Agency will be reimbursed for allowable expenses up to the Contract Total. The W-2 Contract Agency is not entitled to the Contract Total, or to any amount within a Contract subcategory, if the W-2 Contract Agency does not have fully documented and allowable expenses that equal or exceed that amount.

26.2 Advance Payments

In accordance with the Department's policies and procedures, the Department will issue an advance payment equal to one twenty-fourth (1/24) of the total of the Services and Administration allocations, unless waived (see Contract section 37.3) by the W-2 Contract Agency, for up to the first two (2) months of each two (2) year funding period under the four (4) year Contract Period.

26.3 Recovery of Advance Payments

The recovery of advance payments will occur during the last two (2) reimbursements months in each two (2) year funding period or at the time when the W-2 Contract Agency's reported expenditures equal or exceed its current allocation less the advances on that allocation. The Department reserves the right to begin recovery of advance payments (also known as Take Back) prior to that which is stated above if a W-2 Contract Agency is underspending its allocation and full recovery would not be possible in only two (2) months worth of reimbursements. In the event of a termination of the Contract, the W-2 Contract Agency terminating or being terminated will be put on one hundred percent (100%) Take Back. With one hundred percent (100%) Take Back, the W-2 Contract Agency will not receive any additional reimbursements until the advance payments have been recovered.

26.4 Expenditure Report

The W-2 Contract Agency's Expenditure Report for January 2006 must be filed on or before 4:30 pm Central Time (CT) February 25, 2006. The Department will issue payment through Direct Deposit to the Agency's designated Bank Account by March 5, 2006. Thereafter, the W-2 Contract Agency's expenses must be filed on or before 4:30 pm CT on the 25th day of the month following the month for which reimbursement is claimed. The Expenditure Report will be processed and paid by the fifth day of the month following submission, subject to reduction, recovery, and reimbursement as provided in the Contract. If either the 5th or the 25th calendar day of the month falls on a non-business date, as determined by the State business calendar, the report or the payment will be due on the next business day.

The Department will not pay Expenditure Reports that are incomplete. Expenditure Reports that do not contain all required information, including informational and accrual reporting lines, will be returned to the W-2 Contract Agency to be completed and resubmitted. Resubmitted claims will not be paid until the next regular payment date.

26.5 Funding Adjustments within the Base Allocation

W-2 Contract Agencies may request to transfer funding between Services and Benefits or transfer funding from Administration to Services and/or Benefits once each calendar quarter.

26.6 Benefits Paid

Benefits paid will be the amounts paid for W-2 Transition, Community Service Job and Custodial Parent of an Infant cases. These benefit amounts will be obtained from CARES and charged against the W-2 Contract Agency's W-2 Contract in the Department's payment system, each month.

26.7 Expense Reporting

The Department will not reimburse expenses incurred within each two-year funding period, but reported more than ninety (90) calendar days after the end of each two-year funding period of the Contract Period, unless an extension to the reporting due date has been granted by the Department. The 2006-07 Allocations are not available for expenses incurred after December 31, 2007.

26.8 Submitted Expenses

26.8.1 Allowable Expenses

Expenses submitted under the Contract must be fully documented and allowable, which includes being reasonable, appropriate, and necessary for the delivery of program services under the Contract. The Department's policies and procedures regarding prior approval for certain expenses must be followed for an expense covered by the Department's policies and procedures to be allowable.

26.8.2 Adjustments to Expenditure Reports

Adjustments to an Expenditure Report for a prior expense report period must be fully documented to show the specific expenses being adjusted, the reason for the adjustment and the amount of the adjustment. At the request of the Department, the W-2 Contract Agency must also provide information on what steps the W-2 Contract Agency is taking to prevent the reoccurrence of the situation that resulted in the adjustment.

26.8.3 Method for Reporting Expenses

In accordance with the Department's policies and procedures, the W-2 Contract Agency must use an approved, documented method for determining whether expenses are direct, allocated direct or indirect costs. The W-2 Contract Agency must use the Department's method for determining how expenses shall be reported within the required reporting categories.

26.8.4 Consistent with Cost Allocation

Expenses submitted under the Contract must be consistent with the Department's policies and procedures for Agency Cost Allocation, Federal Cost Allocation and Random Moment Sampling.

26.8.5 Unauthorized Costs

It is specifically understood that the funds provided to the W-2 Contract Agency under this Contract may be claimed for reimbursement only for expenses whose purposes are authorized by this Contract, and that a knowing claim for reimbursement for expenses for unauthorized costs constitutes a breach of this Contract and a misappropriation of public funds.

26.8.6 Informational Reporting

26.8.6.1 Selected Costs

The W-2 Contract Agency must report its costs for advertising/promotion, legal, rent, telecommunication, fraud prevention, fraud investigation and any other costs as provided for in the Information Section of the Expenditure Report form. These line codes will be used to obtain information needed for Department monitoring purposes. These expenses are reimbursed by their inclusion within the broader expense categories in the reimbursable section of the Expenditure Report form.

26.8.6.2 Accruals

W-2 Contract Agencies must identify and report their accrued administration and service expenditures in the accrual section of the Expenditure Report for the month they are reporting on. For example, the January report due February 25 would contain the paid January expenditures in the reimbursement section of the Expenditure Report and the accrued January expenditures in the accrual section of the Expenditure Report. Accrued expenditures are costs incurred but not yet paid by the W-2 Contract Agency.

26.8.7 Spending Caps for Selected W-2 Costs

The maximum spending limits for advertising/promotional costs, telecommunication costs and legal services under this contract are contained in Appendix D, Spending Caps. The W-2 Contract Agency shall not exceed these limits unless it receives prior written approval from the Department.

The Department reserves the right to impose additional caps and/or revise the caps at any time during the Contract Period. Such revisions would not be retroactive.

26.9 Administration Costs

Expenses for administration of W-2 and Related Programs, including agency management, support and overhead (AMSO) and other expenses as identified in the Department's policies and procedures, are limited to a percentage of the W-2 Contract Agency's total reported expenses as identified on the Department's payment system.

The contract limits for administration are as follows:

Fifteen percent (15%) for a Balance of State W-2 Contract Agency;

Twelve percent (12%) for a Milwaukee Job Development and Placement Agency;

Ten percent (10%) for a Milwaukee Case Management Agency; and

Ten percent (10%) for the Milwaukee SSI/SSDI Advocacy Agency

26.10 Payment Adjustments

26.10.1 Adjustments with Corrective Action Opportunity

After giving the W-2 Contract Agency notice and an opportunity to take Corrective Action as outlined in section 17 of the Contract (Records of Contract Compliance Issues, Monitoring and Corrective Action), if the W-2 Contract Agency fails to satisfactorily perform its responsibilities under the Contract, the Department may reduce, withhold, or recover payments from the W-2 Contract Agency.

26.10.2 Adjustments without Corrective Action Opportunity

If the Department determines that the Department has reimbursed the W-2 Contract Agency erroneously, or if the conditions set forth in the Penalty Amount section of the Contract are met, or equivalent conditions are met, the Department may reduce, withhold, or recover payments from the W-2 Contract Agency.

26.10.3 Federal Recovery

The Department may assert a claim for recovery from the W-2 Contract Agency at any time the Department is subject to recovery by the federal government.

26.11 Early Spending with Approved Transition Plan

If the W-2 Contract Agency is making a transition into a geographic area that was previously served by a different W-2 Contract Agency, the W-2 Contract Agency may receive reimbursement for funds spent before the beginning date of the Contract to the extent that the funds are spent after the Department has approved the W-2 Contract Agency's transition plan and the item(s) is approved for early spending.

26.12 W-2 Contract Agency Employee Compensation

The salaries of W-2 Contract Agency employees shall be comparable to the salaries paid to employees in comparable positions in the local labor market.

27. Audit and Audit Liabilities

27.1 Annual Audit

The W-2 Contract Agency agrees to provide an annual audit in compliance with the Department's policies and procedures including all relevant provisions of the Department's "Wisconsin Works (W-2) Financial Management Manual," the "Provider Agency Audit Guide" and the "State Single Audit Guidelines." The Department may require that the W-2 Contract Agency must gain approval of the audit firm to be used for the audit. At the direction of the Department, the W-2 Contract Agency must expand the scope of its annual audit to address areas of concern identified by the Department.

Audits of private W-2 Contract Agencies are due six (6) months after the end of each W-2 Contract Agency's fiscal year, unless an extension is granted by the Department. County audits are due nine (9) months after the end of each county's fiscal year unless an extension is granted by the Department of Health and Family Services. All W-2 findings must be resolved within one hundred and eighty (180) days of the receipt of the audit by the Department. Failure to submit the audit timely, or to resolve audit findings in a timely manner, may result in the withholding of reimbursement payments and/or imposition of failure penalties of up to \$5,000 per day.

27.2 State or Federal Auditors

The Department reserves the right to audit the W-2 Contract Agency's performance. The W-2 Contract Agency agrees to cooperate with the Department and other State auditors designated by the State, and/or federal auditors.

27.3 State or Federal Audit Exceptions

The Parties to the Contract agree that the W-2 Contract Agency shall be held liable for any State or federal audit exceptions in which acts or omissions of the W-2 Contract Agency are cited and the W-2 Contract Agency shall return to the Department all payments made under the Contract to which exception has been taken and proven or which have been disallowed

because of such an exception. The Department agrees to interpret this provision in a manner that will not unfairly penalize a W-2 Contract Agency that has followed the Department's written policies and instructions.

27.4 Resolution of Federal Audit Exceptions

Nothing contained in the Contract shall limit the Department's obligation to promptly pursue with the appropriate federal agencies the expeditious clarification, resolution and disposition of federal audit exceptions which the Department and the W-2 Contract Agency agree are erroneous or inappropriate.

28. Civil Rights Compliance Plan (Federal)

28.1 Submittal

The W-2 Contract Agency shall submit its Civil Rights Compliance Plan (CRC) in accordance with the Department's policies and procedures for CRC standards, to the Department's Contract Manager within thirty (30) calendar days of signing this Contract.

28.2 Combined Plan

The W-2 Contract Agency may combine its Civil Rights Compliance Plan under this section with its Affirmative Action Plan under section 30 of the Contract.

29. Language Access Plan

The W-2 Contract Agency shall submit a Language Access Plan (LAP) for Limited English Proficiency participants as a part of the W-2 Contract Agency's Civil Rights Compliance Plan under section 28 of the Contract.

30. Non-discrimination/Affirmative Action (State)

30.1 W-2 Contract Agency Agreement

In connection with the performance of work under the Contract, the W-2 Contract Agency agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, creed, sex, national origin or ancestry, disability, developmental disability as defined in section 51.01(5) Wisconsin Statutes, physical condition, arrest or conviction record, marital status, political affiliation, military participation, use of lawful products, or sexual orientation as defined in section 111.32(13m) Wisconsin Statutes. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the W-2 Contract Agency further agrees to take affirmative action to ensure equal employment opportunities.

30.2 Written Plan

Contracts estimated to be over Twenty-Five Thousand Dollars (\$25,000) require the submission of a written Affirmative Action Plan by the W-2 Contract Agency. An exemption occurs from this requirement if the W-2 Contract Agency has a workforce of less than twenty-five (25) employees. Within thirty (30) calendar days of signing this Contract, the W-2 Contract Agency must submit the plan to the Department for approval. Instructions on preparing the plan and technical assistance regarding this section are available upon request from the Department.

30.3 Posting of Notice

The W-2 Contract Agency agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the Department that sets forth the provisions of the State of Wisconsin's non-discrimination law.

30.4 Failure to Comply

Failure to comply with the conditions of this Non-discrimination/Affirmation Action (State) section may result in the W-2 Contract Agency becoming declared an "ineligible" W-2 Contract Agency, termination of the Contract, or withholding of payment.

30.5 W-2 Participants

A W-2 Contract Agency with more than fifty (50) authorized permanent full-time equivalent positions must include in its Affirmative Action Plan a plan to employ individuals participating in the W-2 program. A W-2 Contract Agency with fifty (50) or fewer authorized permanent full-time equivalent positions is encouraged to employ individuals participating in the W-2 program.

30.6 Combined Plan

The W-2 Contract Agency may combine its Affirmative Action Plan under this section with its Civil Rights Compliance Plan under section 29 of the Contract.

31. Health and Safety

31.1 Health and Safety Requirements

The W-2 Contract Agency agrees to participate in the Department's Critical Incident/Business Resumption Plans, evacuation drills and related safety precautions at locations with Department staff and equipment, including identifying a facility contact person, if needed.

31.2 Pro-Children Act of 1994

Since a portion of the funds under the Contract includes federal funds, the W-2 Contract Agency agrees to comply with Public Law 103-227 (20 U.S. sections 6081-6084), also known as the Pro-Children Act of 1994. The law requires that smoking not be permitted within any indoor facility (or portion thereof) owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18). The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infant and Children (WIC) coupons are redeemed.

32. Open Records Law and Confidentiality

Except as required by laws providing for the confidentiality of personal information, the Wisconsin Open Records Law, sections 19.31 through 19.39 of the Wisconsin Statutes, applies to the Contract.

33. Reference to the State of Wisconsin

Reference to or use of the State of Wisconsin, any of its departments, agencies or other subunits, or any State official or employee for commercial promotion is prohibited.

34. Proprietary Information

34.1 Requirements

Any material submitted by the W-2 Contract Agency to the Department that the W-2 Contract Agency considers confidential and proprietary information and which qualifies as a trade secret, as provided in section 19.36(5) of the Wisconsin Statutes, or material which can be kept confidential under the Wisconsin public records law, must be identified on the Designation of Confidential and Proprietary Information form, (Part 2, Section 1.16 of the W-2 Plan). The Department will decide on the status of material submitted under the Wisconsin public records law and will notify the W-2 Contract Agency of its decision. In the event of a request to inspect information, which the W-2 Contract Agency has designated and the Department has accepted as not subject to disclosure, the Department will notify the W-2 Contract Agency of the request and the W-2 Contract Agency will be responsible for defending the confidentiality of its information.

34.2 State Property

Data and innovations developed as a result of the contracted services cannot be copyrighted or patented. All data, documentation, and innovation become the property of the State of Wisconsin.

35. Duty to Disclose Potential Claims

35.1 Statement

The W-2 Contract Agency shall disclose any potential claim or liability that it is aware of which could have a material effect on its ability to deliver services under the Contract or shall state that there are no such potential claims or liabilities.

35.2 Continuing Duty to Disclose

During the Contract Period, the W-2 Contract Agency has a continuing duty to disclose any potential claim or liability which could have a material effect on its ability to deliver services under the Contract at any time that it learns of the existence of such a potential claim or liability.

36. Indemnification

The W-2 Contract Agency agrees to indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by any persons or property resulting from the negligence, misconduct, or breach of confidentiality by the W-2 Contract Agency, or any of its agents, employees or subcontractors, in performing the terms and conditions of the Contract. The W-2 Contract Agency agrees to indemnify and hold harmless the State and all of its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements or contracts between the W-2 Contract Agency and any of its subcontractors or vendors to perform services or otherwise supply products or services. The Department acknowledges that the State may be required by section 895.46(1) of the Wisconsin Statutes, to pay the costs of judgments against its officers, agents or employees, and that an officer, agent or employee of the State may incur liability due to negligence or misconduct. In the event of a lawsuit challenging the validity of an aspect or provision of W-2, the Department will defend such lawsuit.

37. Insurance Responsibility

37.1 Worker's Compensation

The W-2 Contract Agency and any subcontractors performing services for the State of Wisconsin shall maintain worker's compensation insurance as required by Wisconsin Statutes, for all employees engaged in work and for all participants in Community Service Job (CSJ), Wisconsin Works Transition positions, and Food Share Employment and Training work experience and for those repaying Job Access Loans through volunteer work or gaining work experience through volunteer work.

37.2 Other Insurance

The W-2 Contract Agency shall maintain commercial liability, bodily injury and property damage insurance against any claim(s) that might occur in carrying out the Contract. Minimum coverage shall be One Million Dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations. Provide motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the Contract. Minimum coverage shall be One Million Dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.

A county is not required to carry insurance coverage under this provision to the extent that its employees are covered by a self-insurance program under sec. 895.46, Wis. Stats.

37.3 Bonding

Private W-2 Contract Agencies that do not waive the receipt of advance payments under Contract section 26.2 shall maintain a bond or alternative acceptable to the Department, equal to one twenty-fourth (1/24) of the Services and Administration allocations for the two (2) year funding period. The private W-2 Contract Agency shall submit evidence of the bond or alternative when requested by the Department.

38. W-2 Contract Agency Tax Delinquency

A W-2 Contract Agency that has a delinquent Wisconsin tax liability may have its payments offset by the State of Wisconsin.

39. Copyright and Publication Rights

39.1 Legal Rights

In connection with the performance of work under the Contract, the W-2 Contract Agency agrees that the Department owns all legal rights (including, but not limited to copyrights) to all images, designs, text, video, electronic files (composite and supporting files) and all other materials or products developed or created as a result of the Contract.

39.2 Data Gathering Instrument

Any data gathering instrument developed by the W-2 Contract Agency must be furnished to the Department's Contract Manager at or before the time it is put in use. Data gathering instruments include, but are not limited to, follow-up reporting forms, computer-assisted interactive interviews, and survey schedules. The purpose of this requirement is not a review and approval process. Instead, the Department's intent is to share best practices and improve data-gathering techniques across the W-2 program.

40. Disclosure of Independence and Relationship

40.1 No Relationship

When signing the Contract, the W-2 Contract Agency certifies that no relationship exists between the W-2 Contract Agency and the Department that interferes with fair competition or is a conflict of interest, and no relationship exists between the W-2 Contract Agency and another person or organization that constitutes a conflict of interest with respect to a State contract. If there is a conflict of interest, the W-2 Contract Agency must notify the Department's Contract Manager. The Department will refer this notice from the W-2 Contract Agency to the Department of Administration. The Department of Administration may waive this provision in writing, if the activities of the W-2 Contract Agency will not be adverse to the interests of the State.

40.2 Department Regulation, Funding or Adverse Interests

The W-2 Contract Agency agrees as part of the Contract that during performance of the Contract, the W-2 Contract Agency will neither provide contractual services nor enter into any agreement to provide services to a person or organization that is regulated or funded by the Department or has interests that are adverse to the Department. If there is a conflict of interest, the W-2 Contract Agency must notify the Department's Contract Manager. The Department will refer this notice from the W-2 Contract Agency to the Department of Administration. The Department of Administration may waive this provision in writing, if the activities of the W-2 Contract Agency will not be adverse to the interests of the State.

41. Dual Employment

Section 16.417 of the Wisconsin Statutes prohibits an individual who is a State of Wisconsin employee or who is retained as a consultant full-time by a State of Wisconsin agency from being retained as a consultant by the same or another State of Wisconsin agency where the individual receives more than Twelve Thousand Dollars (\$12,000) as compensation for the individual's services during the same year. This prohibition does not apply to individuals who have full-time appointments for less than twelve (12) months during any period of time that is not included in the appointment. It does not include corporations or partnerships.

42. Conflict of Interest

Private and non-private corporations are bound by sections 180.0831 and 180.1911(1) of the Wisconsin Statutes regarding conflicts of interests in the conduct of State contracts.

43. Independent Capacity

The Parties hereto agree that the W-2 Contract Agency, its officers, agents, and employees, in the performance of the Contract shall act in the capacity of an independent contractor and not as an officer, employee, or agent of the State. The W-2 Contract Agency agrees to take such steps as may be necessary to ensure that each subcontractor of the W-2 Contract Agency will be deemed to be an independent contractor and will not be considered or permitted to be an agent, servant, joint venture, or partner of the State.

44. Contract Administration

The Department retains the right to contract, separate from any W-2 Contract Agency contract, with an individual or organization for the management oversight and/or the coordination of W-2 Contract Agency services in a county with a total population of over 500,000.

45. American Indian Tribe – Lobbying

The Lobbying Certification requirement does not apply to an American Indian tribe with respect to expenditures permitted by other federal laws.

46. Applicable Law

The Contract shall be governed under the laws of the State of Wisconsin. The W-2 Contract Agency shall at all times comply with and observe all federal and State laws, local laws, ordinances, and regulations which are in effect during the period of the Contract and which in any manner affect the work or its conduct. The State of Wisconsin will cancel any contract with a federally debarred agency or an agency which is presently identified on the list of parties excluded from federal procurement and non-procurement contracts. No reimbursement is allowed from the date of a agency's debarment.

47. Severability

If any provision of the Contract is found to be illegal, unenforceable, or void, then the remainder of the Contract shall remain in effect.

48. Assignment

No right or duty in whole or in part of the W-2 Contract Agency under the Contract may be assigned or delegated without the prior written consent of the Department.

49. Time Is of the Essence

Time is of the essence with respect to all specific time periods set forth in the Contract.

50. Waiver

No right under the Contract shall be deemed waived unless either Party sends to the other Party written notice of waiver of that Party's right and the notice is acknowledged in writing. No provision of the Contract shall be deemed waived by reason of either Party failing to enforce the provision on one or more occasions.

51. Employment

The W-2 Contract Agency will not engage the services of any person or persons now employed by the State of Wisconsin, including any Department commission or board thereof, to provide services relating to the Contract without the written consent of the employing agency. This provision does not preclude subcontracting with DWS or its Job Service subunits.

52. Disclosure

52.1 Appropriate Disclosure Requirements

If a State public official (section 19.42 of the Wisconsin Statutes), a member of a State public official's immediate family, or any organization in which a State public official or a member of the official's immediate family owns or controls a ten percent (10%) interest, is a party to the Contract, and if the Contract involves payment of more than Three Thousand Dollars (\$3,000) within a twelve (12) months period, the Contract is voidable by the State unless appropriate disclosure is made according to section 19.45(6) of the Wisconsin Statutes, before signing the Contract. Disclosure must be made to the State of Wisconsin Ethics

Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (telephone 608-266-8123).

52.2 Separate Disclosure Requirements

State classified and former employees and certain University of Wisconsin faculty/staff are subject to separate disclosure requirements, section 16.417 of the Wisconsin Statutes.

53. Disputes

53.1 Exclusive Method

The W-2 Contract Agency's sole and exclusive method of resolving any dispute or controversy arising out of or relating to the Contract shall be the complaint process provided in this section.

53.2 Chief Legal Counsel

The W-2 Contract Agency may address a written complaint to the Chief Legal Counsel of the Department at the following address: Department of Workforce Development, Chief Legal Counsel, P.O. Box 7946, Madison, Wisconsin 53707-7946.

53.3 Timing of Complaint

If the complaint relates to a specific decision of the Department and is received within ten (10) working days after the date of the decision, the Chief Legal Counsel shall review and respond to the complaint. In all other cases, the Chief Legal Counsel may review and respond to the complaint but is not required to do so.

53.4 Other Remedy

If the W-2 Contract Agency is not satisfied with the response of the Chief Legal Counsel, the W-2 Contract Agency may request a review by the Department Secretary. The Secretary or the Secretary's designee shall respond to a request for review in writing. The exclusive remedy for the W-2 Contract Agency after the response of the Department Secretary is to terminate under section 20.1 of the Contract (Without Cause).

54. Documents and Changes Incorporated into the Contract

54.1 Forms Incorporated into the Contract

The following forms, as completed by the W-2 Contract Agency and approved by the Department, are incorporated by reference into the Contract:

- Agency Identification – required (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- Milwaukee Agency Submittal (Form 1A) – required for all Milwaukee W-2 Contract Agencies (supplied by the agency with the RFP W-2 Proposal);
- Request for Consortium Formation (Form 1B) – if applicable, (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- 2006-2007 Base Contract Budget – required (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- Proposer Agency References – required for RFP W-2 Proposal (supplied by the agency with the RFP W-2 Proposal);
- Affidavit of Fair Competition – required for RFP W-2 Proposal (supplied by the agency with the RFP W-2 Proposal);
- Designation of Confidential and Proprietary Information – optional (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);

- Minority Business Preference – if applicable, (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions – required (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- Lobbying – required (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- Disclosure of Lobbying Activities - required (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal);
- Confidentiality Acknowledgement form – optional for the RFP W-2 Proposal (supplied by the agency with the RFP W-2 Proposal); and
- W-2 Program Guarantees – required (supplied by the W-2 Contract Agency with the Right of First Selection W-2 Plan or supplied by the agency with the RFP W-2 Proposal).
- Attachment A - Advance Payment Options
- Attachment B - Worker's Compensation

54.2 Changes in Incorporated Documents

54.2.1 Material Changes

The W-2 Contract Agency is under a continuing obligation to notify the Department of any material change which occurs in any information contained in the documents listed in subsection 54.1 by submitting a revised form or other documents referred to in the Contract. This includes a change of any kind in the organizational or ownership status of the W-2 Contract Agency or any substantial change in the W-2 Contract Agency's financial condition.

54.2.2 Agency Identification Form

The W-2 Contract Agency must notify the Department's Contract Manager in writing no later than ten (10) business days of any changes of information in any of the forms incorporated by reference into the Contract, including the Agency Identification form. (See section 54.1 of the Contract.) The notification must be in writing on the W-2 Contract Agency's official letterhead and signed by the W-2 Contract Agency's director or designee.

54.3 Documents Incorporated into the Contract

54.3.1 Appendices

The following documents attached to the Contract, as Appendices, are incorporated by reference into the Contract:

Appendix A: Allocations for the 2006-2007 W-2 and Related Programs Contract (replaces RFP and RFS Re-contracting Instructions Appendix A);

Appendix B: Information Map for 2006-2009 Contract, Performance Standards for the 2006-2009 W-2 and Related Programs Contract (replaces RFP and RFS Re-contracting Instructions Appendix B);

Appendix C: Incentive Earnings for the 2006-2009 W-2 and Related Programs Contract;

Appendix D: Spending Caps; and

Appendix E: Definitions for the 2006-2009 W-2 and Related Programs Contract (replaces RFP and RFS Re-contracting Instructions Appendix G).

54.3.2 Other Documents

The W-2 Plan and any approved Plan Modifications and the Department's RFP and the Department's Administrator's memorandum on Right of First Selection contracting instructions for the W-2 2006-2009 Contract are incorporated by reference into the Contract.

55. Office of Management and Budget (OMB) Circulars

The W-2 Contract Agency must comply with all requirements under the applicable OMB Circulars. In addition, this Contract extends the application of OMB Circulars A-110, A-122 and A-133 to for-profit entities for the costs claimed under the W-2 program.

56. Contracting Process of Subsequent Contracts

In subsequent contracts the Department shall use the contracting process specified under sec. 49.143(1), Stats, as affected by 2001 Wisconsin Act 16.

IN WITNESS WHEREOF, the Department and the W-2 Contract Agency have executed the Contract on the dates set forth below.

Bill Clingan, Division Administrator
Division of Workforce Solutions
Department of Workforce Development

Date

Signature

Name printed
W-2 Contract Agency Authorized Representative

W-2 Contract Agency's Tax ID Number:

Date